



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
CITY HALL COUNCIL CHAMBERS
MONDAY, NOVEMBER 5, 2012

A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Ashman, Drzyzgula, Marraffa, Sesma and Spiegel. Staff present: Acting City Manager Tomasello, Public Works Director Arnoult, Planning and Code Administration Director Schlichting, Capital Projects/Facilities Director Mullarkey, Housing and Community Development Director Kauffmann, Economic Development Director Lonergan, Lead Planner Robinson, Planner Backe, Planner Bowling, Planning Director Pruss, Public Works Operations Administrator Newhart, Recreation & Park Services Division Chief McGuire, City Attorney Board, and Municipal Clerk Stokes. Planning Commissioner present for joint public hearing: Bauer, Coratola, Hopkins, Kaufman, and Lanier.

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

The Pledge was led by the Mayor and City Council, City of Gaithersburg.

III. INVOCATION

In lieu of an invocation, Mayor Katz called for a moment of silence.

IV. APPROVAL OF MINUTES

Minutes from a regular meeting held September 4, 2012 (*Deferred*)

Motion was made by Council Member Ashman, seconded by Council Member Marraffa, that the minutes of the Mayor and Council work session held October 8, 2012, be approved.

Vote: 5-0

Motion was made by Council Member Ashman, seconded by Council Member Drzyzgula, that the minutes of the Mayor and Council special meeting held October 19, 2012, be approved.

Vote: 5-0

V. CONSENT ITEMS

A. Resolution of the Mayor and City Council Authorizing the City Manager to Enter Into a Contract to Provide Loose Leaf Pick Up

This resolution authorized the City Manager to enter into a contract for Loose Leaf Pick Up with C&C Custom Lawncare, Inc., P.O. Box 510, Mount Airy, Maryland 21771, in an amount not to exceed Forty Thousand Dollars (\$40,000); said funds to be expended from the

Operating Budget.

B. Resolution of the Mayor and City Council Authorizing the City Manager to Enter Into a Contract to Conduct a Space Needs Analysis for Determination of Facility Requirements for the City Police Department

This resolution authorized the City Manager to enter into a contract for a space needs analysis for determination of facility requirements for the City Police Department to NIKA Architects + Engineers, 451 Hungerford Drive, Rockville Maryland 20850, in an amount not to exceed Thirty-Nine Thousand Nine Hundred Ninety-Six Dollars (\$39,996); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Marraffa, seconded by, Council Member Drzyzgula, that the Consent Agenda (Resolution No. R- 69-12 through R-70-12), be approved.

Vote: 5-0

VI. APPOINTMENT

A. Resolution of the City Council Confirming an Appointment by the Mayor to the Animal Control Board

This resolution confirmed the following appointment: Mary Jo LaFrance, 105 Chestnut Street, 20877, three-year term.

Motion was made by Council Member Sesma, seconded by Council Member Ashman, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING AN APPOINTMENT BY THE MAYOR TO THE ANIMAL CONTROL BOARD (Resolution No. R- 71 -12), be approved.

Vote: 5-0

VII. OATH OF OFFICE

Mayor Katz administered the Oath of Office to Animal Control Board Public-at-Large Member Mary Jo LaFrance.

VIII. PRESENTATION

A. Proclamation of the Mayor and City Council Designating November 2012, as "Municipal Government Works Month" in the City of Gaithersburg

The City Council, Acting City Manager Tomasello and City Attorney Board joined Mayor Katz at the podium to issue the above proclamation. As the level of government closest to the people, local government offers its citizens the best opportunity to be heard and to influence the course of our community. The Maryland Municipal League encouraged local municipalities to celebrate Municipal Government Works Month in an effort to educate citizens about the role and function of the government.

IX. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENT

Council Member Drzyzgula

1. Attended the City Green Team meeting and reported that the Sustainable Maryland Application is almost complete and will be submitted to the state for approval. Recognition of

the Cities approved will occur during the Maryland Municipal League Conference in June 2013 in Ocean City, Maryland.

2. Attended the retirement luncheon for City employee Janet Limmer, Parks, Recreation and Culture Department. She created and helped manage special events for the City.
3. Attended the fundraiser for Gaithersburg HELP and Hospice Caring at the Golden Bull in Gaithersburg. The establishment sponsored a comedy show to raise funds for the above mentioned agencies and is looking to schedule similar venues.
4. Attended the County Council GO (Government Operations) Committee meeting with others to discuss the municipal tax duplication issue. Reported that the Maryland Municipal League also met with the County Council on October 18th to discuss the same topic and to seek resolution.
5. Announced the upcoming events and activities scheduled throughout the City.

Council Member Sesma

1. Attended the Gaithersburg High School Educational Foundation reception and silent auction. The fundraiser was held at the Johns Hopkins Campus. Several local officials were in attendance.
2. Recognized the efforts of the City's Green Team and expressed confidence in the approval of the Sustainable Maryland Application submitted.
3. Announced the 3rd Annual Run Under the Lights, associated with the Winter Lights is scheduled for November 17th.
4. Reminded the public of Election Day on Tuesday, November 6, 2012. Announced the polls will open at 7 a.m., and encouraged citizens to use their voice and vote.
5. Announced that a closed meeting was held on Friday, October 19, 2012, at the Gaithersburg Marriott Washingtonian Center at approximately 5:38 p.m., pursuant to the State Government Article of the Annotated Code of Maryland Section 10-508(a)1(I) the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction. The topic discussed was the process for hiring a City Manager for Gaithersburg. Present at the meeting were Mayor Katz, Council Members Ashman, Drzyzgula, Marraffa, Sesma and Spiegel, City Attorney Board, Director of Human Resources Daily, and City Manager Candidates (*left at 7:35 p.m.*). The closed session was adjourned at approximately 8:08 p.m.

Council Member Marraffa

1. Announced that the Mayor and City Council are seeking to fill two vacancies on the Commission of Landlord-Tenant Affairs, one (1) full time tenant representative and one (1) alternate tenant representative. All applicants must reside within the corporate City limits. Resumes and letters of interest should be submitted via U.S. Mail to: Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877, or send via email to: cityhall@gaitthersburgmd.gov. These positions will remain open until filled. For more information, visit the City's website or contact Neighborhood Services Director Kevin Roman at 301-258-6340.
2. Expressed well wishes to City retiree Janet Limmer.
3. Announced the upcoming performance of The Reunion Band.

4. Thanked City staff and citizens for the advance and prompt notifications and the efforts to assist others in need during Hurricane Sandy.
5. Encouraged citizens to become involve and vote.

Council Vice President Spiegel

1. Echoed the comments from Council Member Sesma above regarding citizens casting their vote.
2. Echoed the exceptional preparation of staff and particularly the communication which was informative and frequent during Hurricane Sandy. Encouraged residents to sign up for Alert Gaithersburg.
3. Announced that November is Municipal Government Works Month and recognized City employees for their day-to-day operations and efforts.
4. Mentioned he joined other municipal officials on October 24th to discuss PEPCO, energy efficiency and municipal tax duplication. Encouraged City staff to look into the research done by the Montgomery County Council President on energy efficiency and micro grids.
5. Mentioned the City's Holiday Giving Program. Sponsors will adopt Gaithersburg families who are in need for food baskets and Christmas gifts for children.

Council Member Ashman

1. Announced that Alert Gaithersburg assisted many during the emergency situation mentioned above. Reported that the number of subscribers had increased.
2. Congratulated Acting City Manager Tomasello and City staff on the service provided to residents during Hurricane Sandy.
3. Encouraged all to vote and noted that there are interesting questions on the ballot this year.
4. Noted that Quince Orchard High School is top seed in the 4A Division. Playoffs begin Friday evening against Bethesda Chevy Chase. Encouraged the community to support the team and attend the game at Quince Orchard High School at 7 p.m.
5. Announced that he could not attend the retirement celebration for Janet Limmer, but wished her the best.
6. Announced that the Mayor and City Council of Gaithersburg plan to conduct a closed executive session immediately following its scheduled regular meeting on Monday, November 5, 2012, at City Hall. The meeting is proposed to be closed pursuant to the State Government Article of the Annotated Code of Maryland, Section 10-508(a)(3) to consider the acquisition of real property for a public purpose and matters directly related thereto; and Section 10-508(a)(4) to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State. The topics to be discussed are the potential sale of City-owned property and the consideration of a proposal to provide incentives for an apartment complex to redevelop in the City. The closed executive session will be conducted pursuant to a motion properly adopted during the session of the Mayor and City Council on Monday, November 5, 2012.

Mayor Katz requested a motion for the above:

Motion was made by Council Member Ashman, seconded by Council

Member Sesma, that the Mayor and City Council conduct a closed executive session on Monday, November 5, 2012.

Vote: 5-0

Mayor Katz

1. Directed staff to contact PEPCO regarding the numerous power outages in the Saybrooke community.
2. Announced the following information and meeting schedule:
 - Three finalists (Michael Mallinoff, Todd Parton and Tony Tomasello) for the Gaithersburg City Manager position. A meet and greet reception for interested residents and community stakeholders hosted by the Mayor and City Council have been scheduled for Saturday, November 17, 2012 from 2- 4 p.m. at the Activity Center at Bohrer Park, 506 S. Frederick Avenue. For more information contact the Human Resources Department at 301-258-6327.
 - work session scheduled for Tuesday, November 13, 2012, to receive annual briefings from the Transportation Committee, Environmental Affairs Committee, and the Educational Enrichment Committee.
 - next regular meeting scheduled for Monday, November 19, 2012.

X. FROM THE ACTING CITY MANAGER TOMASELLO

1. Thanked staff for their efforts during Hurricane Sandy. Mentioned the remarkable emergency Red Cross shelter set up at the City's Parks, Recreation and Culture Activity Center. Thanked staff from the Montgomery County Department of Health and Human Services and the County Sheriff's Department for their involvement. Noted that the inspectors from the City's Planning and Code Administration Department showed up to assist with storm restoration.
2. Reported that the Gaithersburg Aquatic Center will be completed in two phases for structural repairs and enhancements. There may be a three-way agreement between the City, Montgomery County government and the Montgomery County Public Schools. Staff is working to get the structural phase moving.
3. Announced that the City received three RFPs for the Kentlands Firehouse which the staff team had begun reviewing and evaluating. Noted that it is a complex project.
4. Reported that a notice was received regarding the 315 East Diamond project. Stated that the partnership formed to develop the parcel was terminated. Planning and Code Administration Director Schlichting spoke and informed the Mayor and City Council that he, Economic Development Director Lonergan, and other staff will work to incorporate the City's vision to create a showcase for the site. Announced that the City will host a developer's luncheon at Growlers next week. Stated this site is a priority.
5. Reported there are issues regarding the use of the Park and Ride lot (overnight parking, truck parking, etc.) at West Diamond Avenue. An analysis will be completed and available in the next few weeks.

XI. ECONOMIC DEVELOPMENT UPDATE

Economic Development Director Lonergan

1. Reported that the Gene DX resolution for the City Manager to negotiate and execute an economic development incentive agreement, will come before the Mayor and City Council on November 19th.
2. Announced that he and City staff (Schlichting and Robinson) have been reviewing proposals for the Frederick Avenue Corridor analysis. Five finalists have been selected and between now and Thanksgiving City staff will conduct interviews with representatives from each of the five finalists and have a final recommendation by the end of the month.
3. Provided additional information regarding the City sponsored luncheon for developers at Growlers on November 15th, 12 p.m.

XII. ORDINANCES, RESOLUTIONS AND REGULATIONS

A. Resolution of the Mayor and City Council Authorizing the City Manager to Negotiate and Execute an Economic Development Incentive Agreement With Gene DX

(Deferred)

B. Resolution to Negotiate and Execute a Contract With Rifkin, Livingston, Levitan & Silver, LLC for Lobbying Services Associated With the City's 2013 State Legislative Agenda

This resolution authorized and directed the City Manager to negotiate and execute a contract with Rifkin, Livingston, Levitan & Silver, LLC, 225 Duke of Gloucester Street, Annapolis, Maryland 21401, for legal services associated with the City's 2013 State legislative agenda, in an amount not to exceed Thirty Five Thousand Five Hundred Dollars (\$35,000); said funds to be expended from the Operating Budget.

Motion was made by Council Member Spiegel, seconded by Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A CONTRACT WITH RIFKIN, LIVINGSTON, LEVITAN & SILVER, LLC (Resolution No. R-72-12) be approved.

Vote: 5-0

C. Introduction of an Ordinance to Amend Chapter 15 of the City Code Entitled "Offenses – Miscellaneous," so as to Repeal Section 15-3, Entitled "Fortunetelling Prohibited; Exception" to Remove the Prohibition of Fortunetelling in the Incorporated City Limits

City Attorney Board introduced and gave background to mirror the county's ordinance. The proposed ordinance was discussed during a work session held on September 24, 2012, repealing Section 15-3 of the City Code, so as to update the current code section. Following the introduction, staff will schedule the public hearing for Monday, December 3, 2012.

Motion was made by Council Member Sesma, seconded by, Council Member Drzyzgula, that AN ORDINANCE TO AMEND CHAPTER 15 OF THE CITY CODE ENTITLED "OFFENSES-MISCELLANEOUS",SO AS TO REPEAL SECTION 15-3, ENTITLED "FORTUNETELLING PROHIBITED:EXCEPTION" TO REMOVE THE PROHIBITION OF FORTUNETELLING IN THE INCORPORATED CITY LIMITS, be introduced.

Vote: 5-0

D. Resolution of the Mayor and Council of the City of Gaithersburg Approving the Application and Receipt of Funding for a Strategic Demolition and Smart Growth Impact Fund project in Gaithersburg, Maryland to be Funded Either Directly by the Department of Housing and Community Development of the State of Maryland or Through Other Departments or Agencies of the State of Maryland

Economic Development Director Lonergan presented the above resolution. The City is applying for \$250,000 from the State of Maryland's *Strategic Demolition and Smart Growth Impact Fund* (SGIF) to acquire and demolish 405 East Diamond Avenue, which is located in the City's current Sustainable Communities Area. The SGIF is a new source of economic and community development funds seeking to stimulate smart growth activities, increase employment opportunities, and facilitate mixed-use development in existing communities near Transit Oriented Development sites. To be eligible, a project must be located in a Priority Funding Area, be part of a Sustainable Communities Designation and support the 12 State Planning Visions. This project aligns with the State's Smart Growth objectives, and with the City's own economic development priorities, as the redevelopment of this parcel will create jobs, enhance the Olde Towne Central Business District and support strong partnerships between the public and private sectors. It was noted that no contract is currently on the property.

Motion was made by Council Member Ashman, seconded by Council Member Spiegel, that a RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG APPROVING THE APPLICATION AND RECEIPT OF FUNDING FOR A STRATEGIC DEMOLITION AND SMART GROWTH IMPACT FUND PROJECT IN GAITHERSBURG, MARYLAND TO BE FUNDED EITHER DIRECTLY BY THE DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT OF THE STATE OF MARYLAND OR THROUGH OTHER DEPARTMENTS OR AGENCIES OF THE STATE OF MARYLAND (Resolution No. R-73-12), be approved.

Vote: 5-0

E. Resolution of the Mayor and the City Council Establishing a Constitution Gardens Ad Hoc Improvement Committee

Acting City Manager Tomasello presented and gave a brief background on the above resolution. Constitution Gardens has been in continual service since 1988; however, public use of the park had declined. The Constitution Gardens Ad Hoc Improvement Committee is being established to study the park, its features, and potential uses under a specific charge and set of duties. The committee's charge included:

1. Review existing conditions at the site.
2. Identify any commemorative plantings that may be restored or relocated, if needed.
3. Review information gathered by staff through outreach to the original donor base.
4. Consult with the Gaithersburg Police Department on safety and security issues related to renovation of the park.
5. Gather public input on potential improvements or modifications to the site.
6. Compile a list of prioritized options intended to increase the use of the park and its environs for presentation to the Mayor and City Council on or about April 1, 2013.

Once established, staff will begin outreach and promotion activities to potential members.

Motion was made by Council Member Drzyzgula, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL ESTABLISHING A CONSTITUTION GARDENS AD HOC IMPROVEMENT COMMITTEE (Resolution No. R-74-12),

be approved.

Vote: 5-0

XIII. JOINT PUBLIC HEARING

- A. **CTAM-1211-2012, An Ordinance to Amend Chapter 24 of the City Code, Entitled, "Zoning," Article XII, Entitled, "Preservation of Historic Resources," §25-225, Entitled, "Historic District Commission," so as to Conform to Maryland House Bill 858 Regarding the Number of Historic District Commission Full Members and Alternate Members**

Planner Bowling presented the above ordinance. This application was initiated by the Mayor and City Council following the City's effort to obtain sponsorship on October 1, 2012. On June 1, 2012, Maryland House Bill 858, an act concerning *Land Use- Local Historic District Commissions and Historic Preservation Commissions – Alternate Members*, took effect, amending Article 66B of the *Annotated Code of Maryland*. The amended article specifies the following number of Historic District Commission full members and alternate members: Each local jurisdiction may designate one (1) alternate member for the Commission who may sit on the Commission when any other member of the Commission is absent. When the alternate member is absent, the local jurisdiction may designate a temporary alternate. A historic district commission shall have at least five (5) members. §25-225 of *The City Code* currently specifies the following number of Historic District Commission full members and alternate members: The Mayor and City Council shall appoint a commission of seven (7) Members plus two (2) alternates. Text Amendment Application: CTAM-1211-2012 seeks to ensure that *the City Code* conforms to State law. The proposed ordinance would make certain that the language in §25-225 is consistent with the language of Article 66B/Chapter 426.

There were no speakers from the public.

Motion was made by Commissioner Kaufman, seconded by, Commissioner Lanier, that the Planning Commission hold their record open until 5 p.m. on Thursday, November 15, 2012.

Vote: 5-0

Motion was made by Council Member Ashman, seconded by, Council Member Drzyzgula, that the City Council hold their record open until 5 p.m. on Friday, November 30, 2012.

Vote: 5-0

XIII. POLICY DISCUSSION

- A. **An Ordinance to Amend Chapter 8 of the City Code, Entitled, "Erosion and Sediment Control and Stormwater Management," Article I, Entitled, "General," and Article II, Entitled, "Sediment Control"**

Lead Planner Robinson presented the above ordinance. The Maryland Department of the Environment (MDE) published new erosion and sediment control regulations on January 27, 2012 (*2011 Maryland Standards and Specifications for Soil Erosion and Sediment Control*). The regulations are intended to enhance erosion and sediment control practices across the State, improve the water quality of construction site runoff, and help in Chesapeake Bay restoration efforts. Changes of note with this update include: Establishing a maximum 20-acre grading unit for most construction sites, thereby limiting larger earth disturbances that are more likely to cause sediment pollution and improving stabilization requirements to assist in reducing erosion and sediment generation, and help establish grass in non-work areas.

The City is required by MDE to enact revised requirements in Chapter 8, reflecting the new State regulations by January 9, 2013. A public hearing on the draft ordinance was held on October 1, 2012. No public testimony or comments were received. No additional items had been added to the record since the public hearing. It was noted that the above applies to a minimum 5,000 sq. ft. project.

Motion was made by Council Member Ashman, seconded by, Council Member Drzyzgula, that AN ORDINANCE TO AMEND CHAPTER 8 OF THE CITY CODE, ENTITLED, "EROSION AND SEDIMENT CONTROL AND STORMWATER MANAGEMENT," ARTICLE I, ENTITLED, "GENERAL," AND ARTICLE II, ENTITLED, "SEDIMENT CONTROL" (Ordinance No. O-8-12), be adopted.

Vote: 5-0

B. HIST-0952-2012 - Resolution of the Mayor and City Council Pursuant to §24-226 of the City Code, Application for Historic Designation of the Sterick Cottage, Located at 13 Desellum Avenue, as an Individually Designated Historic Resource Within the City of Gaithersburg

Planner Bowling presented the recommendations of the Historic District Commission (HDC). On September 6, 2012 the HDC found that the building at 13 Desellum Avenue, the Sterick Cottage met three of the criteria for architectural and design significance outlined in §24-226(b)(2) of the City Code. The HDC recommended 13 DeSellum Avenue, the Sterick Cottage, for historic designation as an individually designated resource and initiated a Historic Designation Application: HIST-0952-2012. The Mayor and City Council and the Planning Commission conducted a joint public hearing on Historic Designation Application: HIST-0952-2012, 13 Desellum Avenue, the Sterick Cottage on October 1, 2012. The Planning Department respectfully made its recommendation to the Mayor and City Council on the Historic Designation Application on October 11, 2012. The Planning Department recommended denial of the Historic Designation Application. At their October 17, 2012 regular meeting the Planning Commission made its recommendation to the Mayor and City Council on the Historic Designation Application. The Planning Commission recommended denial of Historic Designation Application. The Mayor and City Council's record closed on October 19, 2012. Staff had respectfully prepared two draft resolutions for HIST-0952-2012, one reflecting historic designation, and one reflecting denial of historic designation and approving demolition. It was noted that the demolition is the responsibility of the City and that a different course of action should be taken in the future to avoid such action. Several noted that their vote to issue a demolition permit was due to the recommendations received.

Motion was made by Council Member Marraffa, seconded by Council Member Spiegel, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL PURSANT TO §24-226 OF THE CITY CODE, DENYING THE DESIGNATION OF THE STERICK COTTAGE, LOCATED AT 13 DESELLUM AVENUE, AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITHIN THE CITY OF GAITHERSBURG AND AUTHORIZATION TO THE CITY MANAGER TO ISSUE A DEMOLITION PERMIT FOR THE STERICK COTTAGE, LOCATED AT 13 DESELLUM AVENUE (Resolution No. R-75-12), be approved.

Vote: 5-0

Motion was made by Council Member Marraffa, seconded by Council Member Spiegel, amending the above motion to ensure that any and all elements of historical architectural significant, be made available for other uses.

Vote: 5-0

C. Applications for Historic Designation of Six Buildings and Two Sites Original to the Circa 1900 Tschiffely-Kent Farm (Historic Designation Applications: Hist-0768-2012, Hist-0769-2012, Hist-0770-2012, Hist-0771-2012, Hist-0772-2012, Hist-0774-2012, Hist-0776-2012, and Hist-0777-2012)

Planner Bowling presented stating that on July 5, 2012, the Historic District Commission (HDC) made seven separate motions, recommending six buildings (the Mansion, the Barn, the Carriage House, the Flour Mill, the Dog and Cat House, and the Superintendent's House) and one site for historic designation (the Springhouse). On August 2, 2012, the HDC made one additional motion, recommending one additional site for historic designation (the Pheasant House and Grotto/Crypt at 801 Inspiration Lane). On August 28, 2012, the Mayor and City Council and Planning Commission conducted a site visit of the properties that comprised the approximately 112-year-old Tschiffely-Kent Farm. Subsequently, the Mayor and City Council and the Planning Commission conducted a joint public hearing on the historic designation applications on September 4, 2012. The Planning Department made its recommendation to the Mayor and City Council on each of the eight historic designation applications on October 12, 2012. The Planning Department recommended the Mansion, the Barn, the Carriage House, the Flour Mill, and the Dog and Cat House for historic designation. The Planning Department did not recommend the Superintendent's House, the Pheasant House and Grotto/Crypt, and the Springhouse for historic designation. On October 17, 2012, the Planning Commission made its recommendation to the Mayor and City Council on each of the eight historic designation applications. The Planning Commission recommended the Mansion, the Barn, the Carriage House, the Flour Mill, and the Dog and Cat House for historic designation. The Planning Commission did not recommend the Superintendent's House, the Pheasant house and Grotto/Crypt, and the Springhouse for historic designation. The Mayor and City Council's record closed on October 18, 2012.

There are currently 50 exhibits in the record, advertised via mail on August 10, 2012, signs posted on August 14, 2012, advertised in the local newspaper on August 15 and 22, 2012, and in addition posted on the City's website. It was noted that there are agreements for the Pheasant House and Grotto house with the City that requires the City's review for changes. It was suggested to have the same for the Superintendent's House due to the historic resource on the property. Staff was directed to contact the owner.

Motion was made by Council Member Sesma, seconded by Council Member Ashman, that HIST-0768-2012 THE DESIGNATION OF THE MANSION AS DELINEATED AT 320 KENT SQUARE ROAD AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITHIN THE CITY OF GAITHERSBURG (Resolution No. R-76-12), be approved.

Vote: 5-0

Motion was made by Council Member Spiegel, seconded by Council Member Marraffa, that the APPROVAL OF HIST-0774-2012 THE DESIGNATION OF THE CARRIAGE HOUSE AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITHIN THE CITY OF GAITHERSBURG, be continued.

Vote: 4-1 (Opposed: Drzyzgula)

Motion was made by Council Member Sesma, seconded by Council Member Drzyzgula, that HIST-0770-2012 THE DESIGNATION OF THE BARN AS DELINEATED AT 311 KENT SQUARE ROAD AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITH

THE CITY OF GAITHERSBURG (Resolution No. R-77-12), be approved.

Vote: 5-0

Motion was made by Council Member Spiegel, seconded by Council Member Marraffa, that the APPROVAL OF HIST-0769-2012 THE DESIGNATION OF FLOUR MILL AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITHIN THE CITY OF GAITHERSBURG, be continued.

Vote: 4-1 (Opposed: Drzyzgula)

Motion was made by Council Member Sesma, seconded by Council Member Drzyzgula, that HIST-0772-2012 THE DESIGNATION OF THE CAT AND DOG HOUSE AS DELINEATED AT 117 KENT SQUARE ROAD AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITHIN THE CITY OF GAITHERSBURG, (Resolution No. R-78-12), be approved.

Vote: 5-0

Motion was made by Council Member Spiegel, seconded by Council Member Marraffa, that the APPROVAL OF HIST-0777-2012 THE DESIGNATION OF THE SPRINGHOUSE AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITH THE CITY OF GAITHERSBURG, be denied.

Vote: 5-0

Motion was made by Council Member Drzyzgula, seconded by Council Member Sesma, that the APPROVAL OF HIST-0771-2012 THE DESIGNATION OF THE SUPERINTEDENT'S HOUSE AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITH THE CITY OF GAITHERSBURG, be continued.

Vote: 5-0

Motion was made by Council Member Spiegel, seconded by Council Member Ashman, that the APPROVAL OF HIST-0776-2012 THE DESIGNATION OF THE PHEASANT HOUSE GROTTO/CRYPT AS AN INDIVIDUALLY DESIGNATED HISTORIC RESOURCE WITH THE CITY OF GAITHERSBURG, be denied.

Vote: 5-0

Staff was directed to reach out to the owners of HIST-0771-2012 and HIST-0777-2012 before taking final action.

D. Resolution of the Mayor and City Council of Gaithersburg Granting Approval of an Amendment to Schematic Development Plan ASDP-0641-2012, Known as Watkins Mill Town Center for Approximately 125 Acres of Property Zoned Mixed Use Development

Planning Director Pruss presented the above agenda item. The applicant, BP Realty Investments, LLC, submitted an amended application requesting to eliminate the commercial component of the 20 approved live/work units and develop the parcels exclusively with residential townhomes. The 10,000 square feet of commercial floor area would be

reallocated to a hotel to be built in phase two of development. A public hearing was held by the Planning Commission on September 5, 2012 and testimony from residents both for and against the proposed change was received. In addition, the Planning Commission requested supplementary information in the form of a retail market analysis. Following the public hearing, the Planning Commission voted to hold their record open until 5:00 p.m. on September 26, 2012. Given the nature of the comments and the information requested, staff recommended and the applicant requested, that the Planning Commission vote to reopen the record at the October 3, 2012 Planning Commission meeting to allow the applicant to address the comments raised during the public hearing. Following the applicant's response, the Planning Commission voted to hold the record open until 5:00 p.m. on October 10, 2012 to allow the public the opportunity to provide additional written comments on the new information presented. At the request of the Commission, the applicant provided a retail market analysis of other area projects to support their belief that there is not a market demand for the live/work units at said location. Concerns expressed by the public were related to parking and other commercial impacts of development on the adjoining residential area. Others expressed concern with the erosion of the commercial component of the approved plan. Staff believes that no builder market exists today at said location and if the request is not approved, then the units would remain undeveloped for years. In addition, staff stated that the approved site plan was flawed in the provision of sufficient parking and exterior commercial activities. Staff's analysis states that the proposed amendment is more compatible and harmonious with the surrounding residential neighborhoods; eliminates the potential for the negative impacts of the previously approved commercial use; in the public interest; and building townhouses now will provide additional density to support the urban core and improve the City's tax base, while also providing the benefit of a finished residential neighborhood that both the residents and businesses would benefit from. Transcripts of the September 5, 2012 and October 3, 2012 public hearings were provided as Exhibits 55 and 62. The Planning Commission recommended approval of ASDP-0641-2012 with a vote of 3-2 (Opposed: Hopkins and Winborne) with the following eight (8) conditions during their October 17, 2012 meeting:

1. The project shall be phased as follows:

Phase 1 commences at approval of SDP and shall permit the following:

Year One - 97 Residential Units and 10,000 square feet of commercial space outside the urban core and one hotel within the urban core.

Year Two - 97 Residential Units outside the urban core and one condominium building in the urban core.

Year Three - 97 Residential Units outside the urban core, two office buildings and 50,000 square feet of cinema or retail in the urban core.

Year Four - 97 Residential Units outside the urban core.

Year Five - Balance of approved residential units (except for Phase 3 condominium tower) and one office building within the urban core.

Completion of construction in any one year may overlap into a subsequent year as long as permits have been issued for all construction in the prior year.

Phase 2 commences at beginning of construction of the Watkins Mill Road Interchange and shall permit the following:

Hotel located along Watkins Mill Road.

Three commercial pad sites between Watkins Mill Road and the urban core.

Three office buildings within the urban core.

One retail anchor within the urban core.

Phase 3 commences upon the beginning of construction of the Corridor Cities Transitway and shall permit the following:

The remaining office building.
The second condominium building.

2. Applicant to provide an Art in Public Places (AIPP) plan and commit funding to be approved by City staff and AIPP committee prior to the issuance of building permits for the first building in the commercial core.
3. Applicant to submit a noise study as part of the final site plan application for the commercial core.
4. Prior to approval of the final site plan, work with staff, to develop technically effective, feasible, aesthetic, and reasonable interior and exterior noise abatement measures to prevent unacceptable noise exposures to the future residents of the development. Noise abatement measures should seek to achieve the 65 dBA exterior noise guideline and the 45 dBA interior noise guideline.
5. The applicant shall dedicate the approximately 14 acres of undisturbed parkland depicted on the western portion of the Casey Property West plan to the City of Gaithersburg prior to the issuance of building permits for the first building in the commercial core.
6. The applicant shall dedicate to the appropriate governmental agencies, portions of the property indicated on the schematic development plan required for the construction and completion of: 1) the Watkins Mill Road Interchange with I-270 right-of-way, including associated ramps and 2) Corridor Cities Transitway right-of-way when required for construction by the appropriate local or state agency including Montgomery County, the Maryland Transit Administration and State Highway Administration.
7. The applicant shall engineer and, upon issuances of the necessary building permits, begin construction of the public portion of Town Center Boulevard between Watkins Mill Boulevard and the commercial core concurrently with, and upon issuance of building permits for either: a) the first building in the commercial core (excluding the live/work units which are the subject of application ASDP-0641-2012), or b) the construction of the Watkins Mill bridge over I-270 or complete interchange; whichever comes first.
8. The applicant shall revise the proposed conceptual architectural elevations to provide pedestrian-level detailing, and the final site plan shall be revised to provide additional pedestrian-level hardscape and street furniture details to enhance the pedestrian environment and provide a better transition from the Urban Core to the residential area.

Following discussion by the Mayor and City Council, it was said that the argument to amend the plan suggests that the plan was poorly designed for today's market and asked that future plans be made more flexible. Questions were raised with the issues associated with the product types, buildout phases, design flaws, sufficient parking, and garbage. Several agreed to move the project forward with lessons learned about phasing, but expressed concern with changes being made to the plan according to the current market and giving up the long term vision of a community, possibly making the community less functional and desirable.

Motion was made by Council Member Ashman, seconded by, Council Member Spiegel, that a Resolution of the Mayor and City Council of Gaithersburg Granting Approval of an Amendment to Schematic Development Plan ASDP-0641-2012, Known as Watkins Mill Town Center for Approximately 125 Acres of Property Zoned Mixed Use Development (Resolution No. R-79-12), be approved with the conditions recommended by the Planning Commission.

Vote: 4-1 (Opposed: Drzyzgula)

- E. **Sponsorship of an Ordinance to Amend Chapter 24 (City Zoning Ordinance), Article I, Entitled, "In General," § 24-1, Entitled, "Definitions," Article III, Entitled, "Regulations Applicable to Particular Zones," Division 11, Entitled, "C-1 Zone, General Commercial," § 24-112, Uses Permitted as Special Exceptions," Division 12, Entitled, "C-2 Zone, General Commercial," § 24-118, Uses Permitted as Special Exceptions," Division 14, Entitled, "I-1 Zone, Light Industrial," § 24-136, Entitled, "Uses Permitted by Right," so as to Provide New Standards for Fortune Telling Uses**

Planning Director Pruss presented and stated that on September 24, 2012, the Mayor and City Council and Planning Commission held a joint work session regarding proposed regulations for the regulation of fortunetellers in the City. The City Code currently does not provide for fortunetelling as a permitted conditional or special exception use within the City limits. Staff received input during the joint work session and revised the ordinance and modified the definition of fortunetelling. In addition, staff clarified the locations and areas proposed for fortunetelling businesses in the City. Staff provided a memorandum detailing the revisions. Because it is a change to the Zoning Ordinance or a Text Amendment, § 24-195 requires that either the City Council or the Planning Commission sponsor the application.

Motion was made by Council Member Sesma seconded by, Council Member Spiegel, that the City Council sponsor the above text amendment and notify the public that a hearing will be scheduled for December 3, 2012.

Vote: 5-0

XIV. FROM THE ACTING CITY MANAGER, CITY ATTORNEY AND OTHER STAFF

Municipal Clerk Stokes

- Request to add the nomination for Council Vice President to the December 3, 2012 Mayor and City Council meeting agenda. Staff was directed to proceed.
- Due to Hurricane Sandy, the October 29th work session was cancelled. Staff seeking approval to reschedule for staff guidance during the regular session on November 19th. Staff was directed to proceed.

XV. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:35 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Municipal Clerk